

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	8:08CR210
vs.)	
)	ORDER
MARTY HIRAM ELLIS,)	CONTINUING TRIAL
)	
Defendant.)	

This matter is before the court on the government's Motion to Continue Trial (Doc. 125). The defendant filed a timely response in objection (Doc. 132).

Mr. Ellis was indicted in the District of Nebraska on January 22, 2009 (Doc. 74) on charges of conspiracy to transport stolen construction equipment and motor vehicles and possession of stolen property (the "Nebraska charges"). He was arraigned in this district on May 26, 2009 and was allowed to return to Arizona, subject to conditions of pretrial release. At Ellis' request, his Nebraska trial was continued from July 21, 2009 to September 29, 2009.

Mr. Ellis was indicted in the District of Arizona on January 21, 2009, on one count of possession with intent to distribute marijuana (the "Arizona charge"). The Arizona charge was re-filed in a superseding indictment on July 29, 2009.

Ellis was most recently arrested in the District of Arizona on or about August 13, 2009, pursuant to an arrest warrant issued by this court for alleged violations of the conditions of his pretrial release.

Defendant Ellis is currently in custody in the District of Arizona, on the Nebraska warrant, awaiting trial on the Arizona charge, which is set for September 22, 2009. Counsel for the United States alleges in the motion that, upon information and belief, both the Arizona Assistant U.S. Attorney and defense counsel did not want Mr. Ellis removed to the District of Nebraska until the Arizona matter was completed.

The government now requests a continuance of the September 29, 2009 Nebraska trial date because it will take the U.S. Marshal Service at least 30 days to transfer Mr. Ellis from Arizona to Nebraska. Defendant Ellis opposes any continuance, *see* Doc. 132.

Noting the defendant's objection, the court finds that the government has shown good cause for a continuance in this instance due to the charges still pending against the defendant in the District of Arizona and the time required to transport the defendant from the District of Arizona to the District of Nebraska. Considering the information given in the motion, in the defendant's response, and the record as a whole, the court finds that the ends of justice will be served by granting the government's request and outweigh the best interest of the public and the defendant in a speedy trial. Failure to grant a continuance would be likely to make a continuation of this proceeding impossible or would result in a miscarriage of justice. *See* 18 U.S.C. 3161(h)(1)(B) & (F); 18 U.S.C. 3161(h)(7)(A) & B(i).

IT IS ORDERED that the government's Motion to Continue Trial (Doc. 125) is granted, as follows:

1. The jury trial now set for September 29, 2009 is continued to **November 3, 2009**.
2. The U.S. Marshal shall transport the defendant, Marty Hiram Ellis, to the District of Nebraska and produce him for trial on November 3, 2009.

2. In accordance with 18 U.S.C. § 3161(h)(7)(A) & (B), the court finds that the ends of justice will be served by granting this continuance and outweigh the interests of the public and the defendant in a speedy trial. Any additional time arising as a result of the granting of this motion, that is, the time between **September 29, 2009 and November 3, 2009**, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act due to the charges still pending against the defendant in the District of Arizona and the time required to transport the defendant from the District of Arizona to the District of Nebraska. The failure to grant additional time might result in a miscarriage of justice.

DATED September 21, 2009.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge